



POLICE DEPARTMENT

May 19, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Newton Hun
Tax Registry No. 936787
107 Precinct
Disciplinary Case No. 2013-9862

The above-named member of the Department appeared before me on November 22, 2013 and January 10, 2014, charged with the following:

1. Said Police Officer Newton Hun, on or about February 9, 2012 at approximately 1910 hours, while assigned to the 107th Precinct and on duty, in the vicinity of [REDACTED], Queens County, was discourteous in that he directed profanity at Minor A.

P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT GENERAL

2. Said Police Officer Newton Hun, on or about February 9, 2012 at approximately 1910 hours, while assigned to the 107th Precinct and on duty, in the vicinity of [REDACTED], Queens County, was discourteous when he asked Minor A, in sum and substance, "Don't you speak English?"

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – GENERAL

The Civilian Complaint Review Board (CCRB) was represented by Nicole Junior, Esq., and Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification Nos. 1 and 2.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on February 9, 2012 at about 7:00 p.m., uniformed police officers assigned to patrol sectors within the 107 Precinct received a radio transmission that a security guard had called 911 to report that males who may have been involved in a past robbery might be inside [REDACTED] Queens.

Officers Cosmo Stoia and David Delvillar, who were assigned to sector Adam, radioed the dispatcher that they would respond and handle this "job." They drove to [REDACTED] in their marked Radio Motor Patrol car (RMP) and entered the shop. Officer Daniel Levy also responded to Red Mango in an RMP to back-up sector Adam. When he arrived there, he also entered the shop. Respondent and his partner Officer Suzanne Hurley (whose last name is now Ortega) were assigned to sector Charlie and they also responded to the radio call as a back-up to sector Adam by driving their RMP to [REDACTED]

The Civilian Complaint Review Board's Case

The attorney for the Civilian Complaint Review Board called Minor B, Minor C, Kecia Pitt and Police Officer Daniel Levy as witnesses.

Minor B

Minor B, who is 19-years old, presently attends John Jay College of Criminal Justice, and resides in Queens, recalled that in February 2012 he was a 17-year old student at [REDACTED] High School ([REDACTED] in Fresh Meadows, Queens. On February 9, 2012, between 6:00 p.m. and 6:30 p.m., he and some of his fellow students went to Red Mango. The students were Minor B's friend Minor A, Minor D, and three girls, Minor E, [REDACTED] and [REDACTED]. All of the students were wearing their [REDACTED] school-issued uniform consisting of black shoes or sneakers, slacks with the school logo displayed, and polo shirts with the school logo embroidered on the shirts. When they arrived at Red Mango, Minor D and Minor E did not immediately enter Red Mango. The others entered and sat down at a table near a window.

Minor B recalled that while he and Minor A were looking out the window, they noticed a security cart driving back and forth in front of [REDACTED]. When the security cart stopped nearby, Minor B commented that "it would be ironic if the police came in and try to do something." Minor B explained that he said this because he and his friends "were black kids, you know, just hanging out." Minor D and Minor E then entered [REDACTED] and "right after they came in the police started coming in."

Minor B recalled that a male Caucasian officer approached the students, asked to see their "IDs," and asked "just the guys" to show him the "knuckles" on their hands. Minor B testified that at this point he "started laughing" because he found the situation ironic in light of his earlier comment. He showed his knuckles to the male Caucasian

officer. Minor B testified that a Hispanic officer who was wearing glasses took their identification information and wrote it down on a piece of paper.

Minor B testified that although he and Minor D cooperated with the officers, Minor A asked the male Caucasian officer, "Why do I have to show you my knuckles? What happened?" At this point a male Asian officer "stormed into" [REDACTED] and told Minor A, "Show your fucking knuckles. Do you not fucking speak English? Show your fucking knuckles." Minor A responded by saying, "I don't understand why I have to show my knuckles." Minor A made another comment but Minor B could not hear what he said. Minor B recalled that a female officer came into [REDACTED] and "escorted" the male Asian officer out of [REDACTED]. Minor A then showed his knuckles to the Caucasian male officer who told them that a "kid was jumped for his phone and the description was a group of black kids."

Minor B identified a photograph [CCRB Exhibit (CCRBX) 1] as depicting the exterior front of [REDACTED] and another photograph as depicting the interior of [REDACTED]. Minor B testified that he saw other police officers both outside and inside [REDACTED] and that the male Asian officer came into the store through the front entrance and immediately approached Minor A who was standing in the middle of the store. Minor B testified that the Caucasian male officer spoke in a "normal tone" in addressing him and his friends and that the Hispanic officer was "nice and polite" to them. When Minor A asked the male Caucasian officer, "Why do I have to show you my knuckles? What happened?" Minor A was speaking at a normal volume. He was not "yelling" and he "didn't sound angry." Minor B testified that the conversation between Minor A and the Caucasian male officer never became loud or angry.

Minor B testified that when the male Asian officer “stormed in,” he moved to within “a couple of inches away” from Minor A’s face and, in an “enraged” voice, loudly demanded that Minor A “Show your fucking knuckles.” He was also “enraged” when he asked, “Do you speak fucking English?” No one else who was present had spoken in a raised voice. Ultimately, Minor A did display his knuckles to the Caucasian male officer. A female officer escorted the Asian officer out of [REDACTED] by putting her hand on his chest, pushing his chest, and backing him out the front door. Minor B recalled that Minor A, speaking in a more “amped up” tone, asked the female officer “for an apology” from the Asian officer because Minor A “felt like he had been disrespected.” The female officer jokingly replied, “It’s okay... I deal with the guy on a daily basis, he’s my partner.” Minor B recalled that later on the Asian officer reentered [REDACTED] and went to the counter where customers place their orders.

On cross-examination, Minor B agreed that he was laughing when the officers first entered [REDACTED] that he and Minor D both answered the questions that were posed to them but that Minor A did not; that Minor A questioned the male Caucasian officer; and that Minor A stood up and approached the male Caucasian officer in order to speak to him. Minor B explained that the male Caucasian officer was the first officer who entered [REDACTED] through the front door, followed shortly thereafter by a Hispanic officer and then a female Caucasian officer. Then other officers came in “from the back of the store.” One of them was “a big black officer.”

Minor B agreed that Minor A was flailing his arms as he was speaking to the male Caucasian officer. Minor B explained that because Minor A was facing the rear of the store speaking to male Caucasian officer when the Asian officer entered through the front

door, Minor A had turned around to face the Asian officer. Minor B agreed that the Asian officer did not run into the store, or push anyone out of the way, or stomp his feet or grab Minor A. Minor B denied that Minor A ever stuck his hands in his pockets or put his hands behind his back. Minor B estimated that the male Caucasian officer had asked Minor A "about eight times" to show him his knuckles. Minor B said that he and Minor D both answered the male Caucasian officer's questions. Minor B agreed that when the Asian officer was backed out of the store by the female officer, he did not protest being pushed out, nor did he yell or move his arms or try to stop her from pushing him.

During redirect examination, Minor B stated that only one of the officers who was inside [REDACTED] during this incident appeared to him to be Asian. When Minor A was flailing his arms while talking to the male Caucasian officer, Minor B did not believe that Minor A was being aggressive.

During re-cross-examination, Minor B explained that Minor A showed his knuckles to the male Caucasian officer after the Asian officer was escorted out of the store.

Minor C

Minor C, a 19-year old from [REDACTED] Queens, who presently attends a university, recalled that on February 9, 2012, she was a student at [REDACTED] High School who worked after school as a cashier at [REDACTED]. Minor C recalled that "young kids," who appeared to her to be "about 15 or 16" year old, entered the [REDACTED] and sat down at a table. About 15 minutes later, she saw security guards pacing back and forth in front of Red Mango. About ten minutes after that, police cars pulled up in front of Red Mango. Uniformed officers entered the store, approached the youths, asked them to

stand up and walk over to them, and asked to see their identification. Minor C testified that prior to the point when the officers entered the store the youths had been acting "perfectly fine" and were "not noisy."

Minor C recalled that the youths were "very inquisitive as to why the police were questioning them," but they were not disrespectful to the officers. Minor C recalled that more than five officers entered [REDACTED] from both the front and the back entrances. Minor C heard one of the youths asking the officers questions in a "very low" voice that "wasn't aggressive." He repeated his questions three or four times. Minor C testified that a male Asian officer then "swung open" the front door and "projected his voice in a yelling manner." Minor C could not remember exactly what the Asian officer had said, but she did recall that this officer used the word "fucking" two or three times. Minor C described the Asian officer's voice as loud and his tone as "very aggressive." He was the only Asian officer inside the [REDACTED] at the time. Minor C recalled that prior to the Asian officer's outburst no one inside the store had yelled or spoken loudly or used any profanity. The Asian officer soon left the store but, later, he came back inside and walked over to the take out counter where either he or the person he was with ordered something to eat.

On cross-examination, Minor C reiterated that only one Asian officer came into Red Mango when the incident took place and that this officer had entered through the front door of the store. Minor C recalled that on the day of the incident the store was "very empty." Minor C confirmed that she heard the Asian officer utter "fucking" two or three times. Minor C did not see the Asian officer being held back by other officers and no one pushed or ordered the Asian officer out of the store after he used profanity.

During redirect examination, Minor C testified that at the point when the Asian officer used profanity, he was looking at “the one main kid,” and that the youth’s only reaction to the profanity was that he “just got silent and looked around to his friends and looked towards me” and shrugged his shoulders.

During re-cross-examination, Minor C confirmed that the “one main kid” who went silent was the same youth who had asked the officers “Why?” three or four times before the Asian officer entered [REDACTED]. Minor C recalled that the officers had responded to the youth’s “Why?” inquiries by telling him, “If you have nothing to hide, then you don’t need to ask questions” and “we don’t really need to tell you.” After the Asian officer yelled at the youth and uttered the word “fucking” two or three times, “everyone” inside the shop “got silent.” A few minutes after the Asian officer left, a security guard entered [REDACTED] looked at the youths, and then shook his head from side-to-side indicating that they were not the youths that he was looking for.

Kecia Pitt

Pitt, who is the sister of Minor A’s mother, testified that on the night of February 9, 2012, her nephew telephoned her and told her that he was “very upset” because he had been “disrespected by a police officer” that day. When she asked him how he had been disrespected, Minor A replied, “The police cursed at me and called me stupid.”

On February 10, 2012, Pitt picked up Minor A from school and brought him to the 107 Precinct so that he could file a complaint regarding the manner in which he had been treated the night before at the [REDACTED] by the Asian officer. Pitt recalled that while they were waiting for assistance, Minor A pointed to an officer and told her, “He could

help us. He was there last night.” Pitt recalled that the officer, who identified himself as Police Officer Daniel Levy, told her that what had occurred the night before was “not supposed to happen” and that he was “very sorry as to what—how that happened” the night before at [REDACTED] Pitt recalled Levy saying the Asian officer was “unorthodox and ill tempered and he wanted – they all wanted to stop him.” Pitt recalled that Levy stated that Minor A had “acted in a manner” her sister could be proud of, that he commended her sister for raising a “gentleman” and that he told her that “he did nothing wrong other than ask why.” Pitt testified that Levy explained that the Asian officer “was unorthodox and ill tempered because it was an Asian kid who was beat up and assaulted.”

On cross-examination, Pitt stated that she did not believe that Minor A had been disrespectful by not answering questions that a police officer had asked him inside Red Mango. Pitt testified that her nephew never told her that an officer had asked him eight times to show him his knuckles. Pitt testified that she and Minor A never discussed the race of the officer who had disrespected him. Levy told her that he was an Asian officer.

Police Officer Daniel Levy

Levy, who has been assigned to the 107 Precinct for the past nine years, testified (after having his recollection refreshed by reviewing previous statements he had made to CCRB) that he was on duty on February 9, 2012, when at about 7:10 p.m., a call came over the radio that “perpetrators from the past” were at [REDACTED] When Levy arrived at [REDACTED] he saw that Respondent and Officers Suzanne Hurley (now Suzanne Ortega), Stoia and Delvillar were already there. Levy recalled that Respondent and all of these other officers went inside [REDACTED] with him.

On cross-examination, Levy confirmed that he has worked with Respondent during the six years that Respondent has been assigned the 107 Precinct. On February 9, 2012, Levy was alone in an RMP assigned as traffic safety officer. Levy stated that during the 20 minute period that he was inside [REDACTED] he never heard any officer, including Respondent whose voice he is familiar with, say "show me your fucking hands" or "don't you fucking speak English?" Levy never heard Respondent use foul or profane language to get an individual's attention during the time they worked together. Levy did not recall hearing any officer direct profane language at any of the customers in the store. Levy testified that the people inside were cooperative with the officers.

On redirect examination, Levy recalled that the next day, February 10, 2012, he spoke with someone at the 107 Precinct about what happened at the [REDACTED]. Levy could not recall who he had spoken with, but he believed it was the mother of one of the people who had been inside [REDACTED] the day before. Levy testified that he could not recall the substance of the conversation he had with the mother.

Respondent's Case

Respondent called Police Officers Cosmo Stoia and Suzanne Ortega and Sergeant Suk Hwang as witnesses and he testified in his own behalf.

Police Officer Cosmo Stoia

Stoia, an eight-year UMOS who is currently assigned to the 107 Precinct as a Domestic Violence officer, was on duty, assigned to sector Adam performing patrol duties in an RMP with his partner Delvillar on February 9, 2012 when, at about 7:00

p.m., they received a radio transmission that suspicious males had been observed at 188 Street and 64 Avenue, which is a shopping center that includes [REDACTED] Stoia recalled that upon arrival at the location, they spoke to the security guards who had called 911. These guards told Stoia that there were males inside [REDACTED] who looked "suspicious" and who might have been involved in a previous robbery. Stoia spoke with these security guards for approximately five minutes outside the store. Stoia did not radio for backup. Stoia recalled that there were no other units present when he entered [REDACTED] with his partner Delvillar. Eventually other UMOS arrived and entered [REDACTED] but Stoia could not recall who entered the store.

Stoia recalled that when he and Delvillar entered [REDACTED] he approached three males, he informed them why they were being stopped, and he asked to see their identification, which they provided. Stoia estimated that he and Delvillar were inside [REDACTED] for about five minutes and that they then went out to their RMP and entered it to prepare their Stop, Question & Frisk Reports and make their Activity Log entries. Stoia stated that he did not use any profane language during his interaction with the males and he did not hear any other officer use any profane language. Stoia could not recall the other officers who entered [REDACTED]

On cross-examination, Stoia stated that he could not recall precisely how many officers entered [REDACTED] but that there were about five others. He could not recall if other officers arrived at the same time or prior to his arrival. Stoia stated the three males he spoke to were Minor B, Minor D and Minor A. Stoia recalled that when he asked to see their identification, they asked "Why?" Stoia

explained to the males that there had been an incident earlier. None of the males raised their voices. Stoia could not recall Sergeant Suk Hwang being present at the [REDACTED]

During redirect examination, Stoia stated that he believed that he was the first officer to arrive at [REDACTED] and the last to leave. Stoia did not hear anyone use the word "fucking" while he was inside [REDACTED].

During re-cross-examination, Stoia conceded that he was unsure if he was the last officer to leave [REDACTED] on February 9, 2012.

Police Officer Suzanne Ortega

Ortega, a five-year member of the Department currently assigned to the 107 Precinct as a Special Operations assistant, stated that she has known Respondent for nine or ten years. Ortega described Respondent's work demeanor as "calm, quiet" and "nice" and that he is "courteous" and "a nice guy." Ortega could not recall any incidents when Respondent used foul or profane language while talking to an individual. At 7:00 p.m. on February 9, 2012, Ortega received a radio transmission regarding a "10-11" (audible alarm). Ortega did not recall responding to [REDACTED] at the Fresh Meadows Shopping Center on 64 Avenue and 188 Street. Ortega stated that she never heard Respondent use the word "fucking" while speaking to any individuals to get their attention or to get a point across.

During cross-examination, Ortega confirmed that she had no recollection of having responded to [REDACTED] her partner and that at that time Respondent was her steady partner. When she was asked if she had heard Respondent use profanity in the past, she answered, "Not really."

Sergeant Suk Hwang

Hwang, a 12-year member of the Department who is currently assigned to Applicant Processing, recalled that he was assigned to the 107 Precinct during February, 2012, and that he was on duty on February 9, 2012, as the patrol supervisor for the third platoon. Hwang recalled that he was present outside [REDACTED] in the [REDACTED] [REDACTED] He could not recall whether he had entered [REDACTED] He also could not recall who the officers were who were there when he arrived and he had no recollection of being involved in any incident that took place inside [REDACTED] on February 9, 2012. He recalled being interviewed by the CCRB about an incident that had taken place inside [REDACTED] on February 9, 2012 and he recalled that during this interview he had stated that he “was requested over there” and that he had spoken with officers assigned to “Sector David.” Hwang could not recall if Respondent was present.

On cross-examination, Hwang agreed that his entries in his Activity Log for February 9, 2012 show that he was present at [REDACTED] at 5:00 p.m. but that he was not there at 6:00 p.m. or at 7:00 p.m. Hwang also agreed that he did not sign off on a UF-250 form that was prepared regarding Minor B by Stoia. Hwang testified that he recognized the signature of Sergeant Fischer on this UF-250. Hwang confirmed that a UF-250 that was prepared regarding Minor A was also signed by Fischer. Hwang confirmed that at his CCRB interview he had stated that he had no recollection of having been present at [REDACTED] at 7:00 p.m. on February 9, 2012.

During redirect examination, Hwang admitted that it is possible that he did not accurately make entries in his Activity Log.

During re-cross-examination, Hwang agreed that if he had responded to [REDACTED] at 7:00 p.m. on February 9, 2012, he would have called the dispatcher to say he had arrived and his call would have been reflected on the SPRINT report. After examining the SPRINT report from the night of February 9, 2012, Hwang confirmed that the SPRINT report contained no entry that he had called the dispatcher at or after 7:00 p.m. to say that he was present at [REDACTED]. Hwang confirmed that the SPRINT report started at 7:03 p.m. and that the responding units were 107 Adam and 107 Charlie.

During redirect examination, Hwang further confirmed that the SPRINT report showed that the first sector to arrive at [REDACTED] was 107 Adam, that the last sector to arrive at [REDACTED] was 107 Charlie and that 107 Adam was the last sector to leave [REDACTED] which was at 7:18 p.m.

During re-cross-examination, Hwang agreed that the SPRINT report contained no entry as to what time Sector Charlie left [REDACTED].

Respondent

Respondent, a nine-year member of the Department, is currently assigned to the 107 Precinct. On February 9, 2012, Respondent performed a 4:00 p.m. to 12:00 a.m. tour with his partner, Officer Ortega, assigned to Sector Charlie. He testified that at approximately 7:00 p.m. he received a radio transmission from Central dispatch of "10-10, suspicious male" in the vicinity of [REDACTED], specifically at [REDACTED]. Upon hearing this radio transmission, he and his partner responded to the

location to back up Sector Adam. He recalled that when they arrived they saw that other RMPs were already present at the location and that Stoia, Delvillar, and Levy were already at the scene although he did not speak to the other officers that were present. As he approached the front door to [REDACTED] he saw multiple officers inside interviewing civilians. Since the situation seemed to be under control, he and his partner did not enter the store. They waited outside. Respondent did not hear any raised voices from inside the store. After waiting for five minutes, he and his partner left the location. Stoia and Delvillar remained at [REDACTED] He did not use any profanity while at [REDACTED] and he did not speak to any civilians while he was there. He did not know what prior incident was being investigated at [REDACTED] who was involved in the prior incident or the ethnicity of anyone involved in the prior incident. He had no recollection of having entered [REDACTED] on February 9, 2012.

On cross-examination, Respondent confirmed that he had received a command discipline because he failed to enter in his Activity Log that he had responded to [REDACTED] on February 9, 2012.

FINDINGS AND ANALYSIS

It is charged that on February 9, 2012 at about 7:10 p.m., while he was on duty, Respondent was discourteous to Minor A inside [REDACTED] in that he directed profanity at Minor A and in that he asked Minor A, in sum and substance, "Don't you speak English?" These charges present two questions: Was a uniformed member of the service (UMOS) verbally discourteous to Minor A inside [REDACTED] and, if so, was Respondent the UMOS who uttered the discourteous remarks?

CCRB presented credible testimony that a UMOS was discourteous to Minor A

Although Minor A, the complainant in this matter, did not testify at this trial,¹ I find that CCRB sufficiently proved that a UMOS was discourteous to Minor A inside [REDACTED] on February 9, 2012 at about 7:10 p.m. through the testimony of Minor B and Minor C.

Minor B testified that after his friend Minor A repeatedly asked a male Caucasian officer, "Why do I have to show you my knuckles?" another male officer entered [REDACTED] through the front door and in a loud, "enraged" voice told Minor A, "Show your fucking knuckles! Do you not fucking speak English? Show your fucking knuckles!" I credit Minor B's testimony because his testimony had the ring of truth and because Minor C, who had no connection to Minor A, Minor B or any of the other [REDACTED] students, corroborated Minor B's testimony that a male officer had entered [REDACTED] and uttered the word "fucking" in addressing the only youth who had repeatedly asked another officer the question, "Why?"

Minor B's testimony had the ring of truth because he did not describe his friend Minor A as having been compliant, uncomplaining and cooperative when he was asked to show his knuckles, and because his testimony regarding the actions of the discourteous officer is devoid of suspect embellishment. Minor B candidly acknowledged that Minor A was the only one of the youths who had protested the Caucasian officer's request to see their knuckles and that Minor A had been stubbornly uncooperative requiring this officer to ask Minor A "about eight times" to show his knuckles to him. If Minor B was inventing a false version of events to support his friend's complaint, it is unlikely that he would

¹ The attorney representing CCRB stated that Minor A is presently attending college in the south.

have been so candid about Minor A's lack of cooperation. The believability of Minor B's testimony is also enhanced by the fact that he did not claim that the discourteous officer had pushed or grabbed or even touched Minor A, only that he had berated Minor A verbally and used profanity.

Minor C, who was not shown to have any anti-police bias, directly corroborated Minor B's testimony that a number of officers were already inside [REDACTED] and that all was calm when a male officer entered through the front door, began "yelling" in an aggressive manner, and uttered the word "fucking" more than once and as many as three times at the youth who had repeatedly asked another officer, "Why?" Minor C further corroborated Minor B's testimony that after the officer who used the word "fucking" walked out of [REDACTED], he came back inside and walked over to the counter.

It is clear that Minor C testified from her own recollection of this event and that she was not parroting Minor B's testimony to support Minor A's claim. If Minor C was tailoring her testimony to support Minor B's testimony, it is likely that she would have claimed that she had also heard the Minor B's who used the word "fucking" tell the youth, "Show your fucking knuckles. Do you not fucking speak English?" But Minor C candidly testified that she had no present recollection of hearing these specific remarks.

Minor C's and Minor B's testimony that a male officer used the word "fucking" more than once inside [REDACTED] was not refuted by any of the witnesses called by Respondent. His partner Ortega (whose last name then was Hurley) had no recollection whatsoever of being at [REDACTED] and although Stoia asserted that he did not hear any officer use profanity, Stoia estimated that he and Delvillar were inside [REDACTED] for only about five minutes before they went outside and entered their RMP to prepare their

reports. Levy, who was called to testify by CCRB, also asserted that he did not hear any officer use profanity. However, Levy's claim must be examined in light of his acknowledgement that the next day an adult relative of one of the youths who was present inside [REDACTED] came into the 107 Precinct to make a complaint and that he spoke to this relative. I credit Pitt's testimony that she was the relative who spoke to Levy and that Levy apologized on behalf of the "Asian officer" and told her that the "Asian officer" had been "unorthodox and ill tempered" inside [REDACTED] because the victim of the assault they were investigating was an "Asian kid." It is unlikely that Levy would have apologized to Pitt if Levy had no reason to believe that the "Asian officer" had done anything wrong.

Since the record establishes that a number of other UMOS were already inside [REDACTED] and that the situation inside the store was calm and completely under control at the point when the UMOS described by Minor B and Minor C entered, that UMOS' use of profanity, and his demeaning "Do you not fucking speak English?" comment in demanding that Minor A show his knuckles, had no legitimate police purpose. Thus, the UMOS's use of profanity in addressing Minor A was unnecessary and, therefore, gratuitous.

CCRB proved that Respondent was the UMOS who was discourteous to Minor A

_____ During their testimony at this trial, neither Minor B nor Minor C made a corporeal identification of Respondent as the UMOS who was discourteous to Minor A inside [REDACTED] on February 9, 2012 at about 7:10 p.m. However, both Minor B and Minor C have consistently described the UMOS who was discourteous to Minor A as an "Asian" male,

that is, a male whose face appeared to them to reflect an “Asian” ethnicity. I find that the circumstantial evidence presented by CCRB establishes that this male “Asian” UMOS could only have been Respondent.

Respondent, whose attorney noted that he was born in the Philippines, has a facial appearance consistent with his ethnicity. Also, Respondent does not dispute that he and his partner were assigned to sector Charlie and that they radioed the dispatcher that they were responding to [REDACTED] to back-up Stoia and Delvillar who were assigned to sector Adam. It is further undisputed that the SPRINT report shows that sector Charlie called the dispatcher at about 7:00 p.m. to report that they were responding to [REDACTED]. Respondent acknowledged that after they arrived, he looked inside [REDACTED] through the front glass window and saw Stoia questioning individuals.

No witness supported Respondent’s claim that he and his partner never entered [REDACTED]. His partner testified that she had no recollection of having responded to [REDACTED] and Stoia testified that about five other officers entered [REDACTED] but that he could not recall who they were. After having his recollection refreshed by a previous statement he made regarding this incident, Levy recalled that Respondent and his partner were inside [REDACTED] along with him and Stoia and Delvillar.

The finding that Respondent was the male “Asian” UMOS is also supported by Minor B’s testimony that after the “Asian” officer cursed at Minor A, a female officer pushed the “Asian” officer out of [REDACTED] by putting her hand on his chest and shoving him backwards out the front door, and then, after Minor A demanded an apology, jokingly replied, “It’s okay... I deal with the guy on a daily basis, he’s my partner.” Since the record shows that the only female officer at the scene was Respondent’s

partner, I find that the female officer who pushed the male "Asian" officer out of [REDACTED] [REDACTED] could only have been Respondent's partner.

Respondent called Sergeant Hwang to testify at this trial in an apparent attempt to show that he was present at [REDACTED] at 7:00 p.m. on February 9, 2012 and that it could have been Hwang, not Respondent, who Minor B and Minor C had seen addressing Minor A. However, Hwang's Activity Log entries for February 9, 2012 show that he was present in the vicinity of [REDACTED] at 5:00 p.m., not at 7:00 p.m. or after. Although Hwang conceded that it was possible that his Activity Log entry that he was there at 5:00 p.m. could have been inaccurate, I find that it is unlikely that Hwang would have made a chronological entry that was inaccurate by two hours. This finding is supported by the testimony of all of the witnesses who testified at this trial, none of whom claimed that a uniformed sergeant was present inside [REDACTED] at the point in time when the youths were being asked to display their knuckles. Also, the fact that another sergeant signed off on the UF-250 forms that Stoia and Delvillar prepared at the scene supports the accuracy of Hwang's Activity Log entry that he was not at [REDACTED] at or after 7:00 p.m. Most significantly, it is not disputed that the SPRINT report contains no entry that Hwang called the dispatcher at or after 7:00 p.m. to report that he was responding to [REDACTED] as he was required to do if he was responding there, and I credit Hwang's assertion that he would have informed the dispatcher if he had arrived at [REDACTED] at or after 7:00 p.m. Thus, the record strongly supports a finding that Hwang was not inside [REDACTED] at or after 7:00 p.m. and that he was, therefore, not the UMOS who addressed Minor A in a discourteous manner.

In conclusion, the record sufficiently establishes that Respondent was the only UMOS who had an “Asian” facial appearance who was present inside [REDACTED] at the point in time when Minor B and Minor C saw an Asian-appearing officer addressing Minor A in a discourteous manner.

Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no prior disciplinary adjudications.

Respondent has been found guilty of having been discourteous to a civilian by uttering the profanity “fucking” at the civilian and by asking him, “Don’t you speak English?”

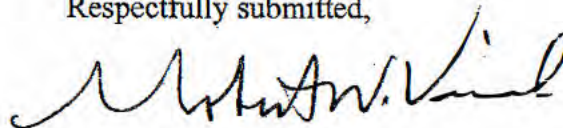
The attorney representing CCRB recommended that Respondent’s penalty consist of the forfeiture of ten vacation days. However, penalties in excess of five vacation days have generally been imposed on officers who had no prior disciplinary adjudications only when the officer has committed other misconduct during an encounter with a civilian in addition to being discourteous to the civilian.

For example, in Case No. 2010-1786 (Nov. 15, 2011), a nine-year officer who had no prior disciplinary adjudications received a penalty consisting of the forfeiture of eight vacation days for being discourteous to a civilian and for abusing his authority by

arresting the civilian without a sufficient legal basis. Also, in Case Nos. 2009-12262 and 2010-968 (Jan. 18, 2012), a six-year officer who had no prior disciplinary adjudications forfeited ten vacation days as a penalty for having engaged in three acts of misconduct: being discourteous to a civilian during a car stop by using profanity; abusing his authority by issuing a summons to the civilian without any legal basis to do so; and, in an unrelated incident, telling an intoxicated arrestee, "Shut up or I'll stick a nightstick up your ass."

Here, Respondent entered a yogurt shop where other UMOS were questioning youths in a calm manner. Even though these UMOS had the situation inside the shop completely under their control Respondent gratuitously used profane, discourteous and demeaning language in addressing one of the youths. Therefore, it is recommended that Respondent's penalty consist of the forfeiture of five vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner – Trials

APPROVED

JUN 17 2014

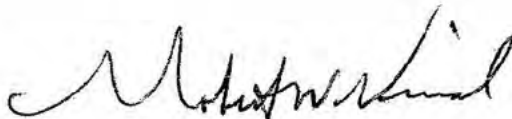
WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER NEWTON HUN
TAX REGISTRY NO. 936787
DISCIPLINARY CASE NO. 2013-9862

Respondent received an overall rating of 3.5 on his 2013 performance evaluation, 3.5 on his 2012 evaluation, and 4.0 on his 2011 evaluation. He has been awarded one Excellent Police Duty medal. [REDACTED] He has no formal disciplinary record and no monitoring records.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials